
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

CLEANCUT, LLC, an Arizona entity,

Plaintiff,

vs.

**RUG DOCTOR, a Delaware entity dba
Nature's Finest Candles; NATURE'S
FINEST CANDLES, a Texas entity; and
JOHN DOES 1-10.**

Defendants.

**ORDER AFFIRMING MAGISTRATE
JUDGE'S ORDER**

Case No. 2:08CV836 DAK

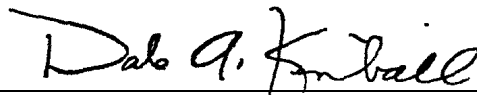
This matter is before the court on the Magistrate Judge's Report and Recommendation ("R&R") dated April 6, 2010. In the R&R, the Magistrate Judge recommended that Defendants' motion be granted in part and denied in part. Defendant Rug Doctor had sought dismissal of Plaintiff's complaint for failing to comply with the Order and for failure to prosecute. After analyzing the five factors set forth in *Ehrenhaus v. Reynolds*, 965 F.2d 916, 920 (10th Cir. 1992), the Magistrate Judge found that dismissal was not the appropriate sanction at this juncture, but that Defendant was entitled to attorneys fees and costs associated with bringing the motion. In addition, the Magistrate Judge recommended that Plaintiff be ordered to supplement its initial disclosures for a third time.

Plaintiff filed an Objection to the court's R&R, arguing that the court should not award fees because Plaintiff's failure to identify topics and categories of documents was substantially justified and that Rug Doctor has not been unfairly prejudiced by Plaintiff's failure.

The court has reviewed the motion and related memoranda, along with the entire case file *de novo*. The court hereby OVERRULES Plaintiff's Objections and APPROVES AND ADOPTS the Magistrate Judge's Report and Recommendation [Docket # 50] in its entirety. Defendant's Motion to Dismiss under Fed. R. Civ. P. 37(b)(2)(A) and 41(b) [Docket # 38] is therefore GRANTED in part and DENIED in part. The court declines to dismiss the action, but Defendant is entitled to its attorneys fees and costs associated with bringing the motion, and it shall file an affidavit setting forth its reasonable fees and costs. Plaintiff shall not respond to Defendant's fees/costs affidavit unless the court so orders. In addition, Plaintiff is ordered, for a third time, to supplement its initial disclosures to the extent it has not already done so.

DATED this 26th day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball", written over a horizontal line.

DALE A. KIMBALL
United States District Judge